

Before the
Administrative Hearing Commission
State of Missouri



MUHAMMAD AL-BASIR,

Petitioner,

vs.

DIRECTOR OF DEPARTMENT OF
INSURANCE, FINANCIAL INSTITUTIONS
AND PROFESSIONAL REGISTRATION,

Respondent.

No. 14-1716 DI

DECISION

We grant the motion for summary decision filed by the Director (“the Director”) of the Department of Insurance, Financial Institutions and Professional Registration (“the Department”). The Director has cause to refuse to renew Muhammad Al-basir’s resident insurance producer license under § 375.141.1(2), (4), and (8).¹

Procedure

On October 29, 2014, Al-basir filed a complaint. The Director filed an answer on November 25, 2014. The Director filed a motion for summary decision on January 16, 2015. We gave Al-basir until February 3, 2015 to file a response, but he filed nothing. On January 23, 2015, the Director filed a supplement to the record providing an original signed affidavit in lieu of a copy previously filed and served with the Director’s motion for summary decision.

¹ Statutory references are to the RSMo Cum. Supp. 2013, unless otherwise indicated.

Admissibility of the Exhibits

Under 1 CSR 15-3.446(6)(A),² we may grant summary decision “if a party establishes facts that entitle any party to a favorable decision and no party genuinely disputes such facts.” The parties must establish the facts by admissible evidence such as affidavits or discovery responses. 1 CSR 15-3.446(6)(B).

The Director submitted evidence consisting of business records affidavits and business records of the Director, Reliable Life Insurance Company, and Dennis Fitzpatrick, Special Investigator of the Division as well as a certified copy of the Director’s order refusing to renew. The Director further supplied the unanswered request for admissions that was served on Al-basir November 25, 2014. Under Supreme Court Rule 59.01, the failure to answer a request for admissions conclusively establishes the matters asserted in the request, and no further proof is required. *Killian Constr. Co. v. Tri-City Constr. Co.*, 693 S.W.2d 819, 827 (Mo. App. W.D. 1985). Such a deemed admission can establish any fact, or “application of the facts to the law, or the truth of the ultimate issue, opinion or conclusion, so long as the opinion called for is not an abstract proposition of law.” *Briggs v. King*, 714 S.W.2d 694, 697 (Mo. App. W.D. 1986). That rule applies to all parties, including those acting *pro se*. *Research Hosp. v. Williams*, 651 S.W.2d 667, 669 (Mo. App. W.D. 1983). Regulation 1 CSR 15-3.420(1) applies that rule to this case.

Based on the foregoing admissible evidence, the following findings of fact are undisputed.

Findings of Fact

1. The Director issued a resident insurance producer license to Al-basir on September 20, 2012.

² References to “CSR” are to the Missouri Code of State Regulations, as current with amendments included in the Missouri Register through the most recent update.

2. From July 9, 2012 through November 12, 2012, Al-basir worked for Reliable Life Insurance Company of St. Louis (“Reliable”), Missouri region, soliciting applications, delivering insurance policies or renewal receipts, and collecting premiums for the company.

3. Al-basir was responsible to remit money collected or received by him to Reliable.

4. In February 2013, Reliable conducted an audit that revealed that Al-basir collected, but did not remit to Reliable, a total of \$554.68 in premium payments on eight different personal life insurance policies. After the audit revealed the payments due and owing from Al-basir to Reliable, Reliable applied his bond of \$105.12, leaving a remaining balance owed of \$449.56 plus \$5.85 in postage.

5. Reliable notified the Department of the findings of the audit on February 14, 2013.

6. Al-basir had no written agreement with Reliable to remit payment of those premium proceeds any longer than 30 days after he collected them, nor did he have any such written agreement with any Reliable policy holder.

7. It was not a regular business practice of Reliable to allow the tender of premium payments collected by an agent beyond 30 days after collection.

8. As a result of Reliable’s notice, Dennis Fitzpatrick, the Special Investigator for the Consumer Affairs Division within the Department, contacted Al-basir at his last known mailing address by inquiry letter dated March 20, 2013 and asked Al-basir to explain Reliable’s audit findings. Al-basir had until April 11, 2013 to file a response.

9. The inquiry letter was not returned to Fitzpatrick as undeliverable or undelivered, and Al-basir failed to respond to it.

10. A second inquiry letter was mailed by Fitzpatrick to Al-basir on May 22, 2013 asking for a response by June 12, 2013.

11. The second letter was not returned undelivered or undeliverable, and Al-basir failed to respond to it.

12. Both letters advised that failure to respond could result in disciplinary action by the Department.

13. On October 15, 2013, the Director served a subpoena on Al-basir by certified and regular mail, ordering his attendance at a subpoena conference on November 14, 2013.

14. The certified mailing containing the subpoena was returned to the Department as unclaimed, but the regular mail piece containing the subpoena was not returned undelivered.

15. Al-basir failed to attend the conference for which he was served a subpoena to appear on November 14, 2013.

16. The Director received Al-basir's "Uniform Application for Individual Producer License Renewal/Continuation" on October 3, 2014.

17. On October 16, 2014, the Director issued an order refusing to renew Al-basir's license under § 375.141.1(2), (4) and (8) and for violation of 20 CSR 100-4.100(2)(A) and 20 CSR 700-1.140(1)(D).

18. Al-basir alleges a "February 14" robbery of insurance premiums he had collected in his complaint; however, he did not contact the police or law enforcement regarding this alleged robbery, nor did he contact Reliable. Further, Al-basir did not work for Reliable in February of any year.

Conclusions of Law

Jurisdiction and Summary Decision Authority

We have jurisdiction to hear this case. Sections 375.141.2 and 621.045. In cases where there is a refusal to renew, the licensee has the burden to show that he or she is entitled to licensure renewal. Section 621.120, RSMo 2000.

When deciding a motion for summary decision, we view the facts and inferences from those facts in the light most favorable to the non-moving party. The burden is on the movant to establish both the absence of a genuine issue of material fact and that he is entitled to a favorable determination as a matter of law. *ITT Commercial Fin. Corp. v. Mid-Am. Marine Supply Corp.*, 854 S.W.2d 371, 376 (Mo. banc 1993). Because of his failure to respond to the Director's request for admissions, Al-basir admitted facts and that those facts authorize discipline. But statutes and case law instruct that we must "separately and independently" determine whether such facts constitute cause for discipline. *Kennedy v. Missouri Real Estate Commission*, 762 S.W.2d 454, 456-57 (Mo. App. E.D. 1988). Therefore, we independently assess whether the facts, as established by Al-basir's admission and the admissible evidence submitted by the Director, allow refusal to renew Al-basir's license under the law cited.

Cause for Refusal

The Director alleges that there is cause to refuse to renew Al-basir's license under § 375.141:

1. The director may suspend, revoke, refuse to issue or refuse to renew an insurance producer license for any one or more of the following causes:

* * *

(2) Violating any insurance laws, or violating any regulation, subpoena or order of the director or of another insurance commissioner in any other state;

* * *

(4) Improperly withholding, misappropriating or converting any moneys or properties received in the course of doing insurance business;

* * *

(8) Using fraudulent, coercive, or dishonest practices, or demonstrating incompetence, untrustworthiness or financial

irresponsibility in the conduct of business in this state or elsewhere[.]

The Director also relies on 20 CSR 100-4.100(2)(A), which provides in relevant part:

Upon receipt of any inquiry from the division, every person shall mail to the division an adequate response to the inquiry within twenty (20) days from the date the division mails the inquiry. An envelope's postmark shall determine the date of mailing. When the requested response is not produced by the person within twenty (20) days, this nonproduction shall be deemed a violation of this rule, unless the person can demonstrate that there is reasonable justification for that delay.

Finally, the Director relies on 20 CSR 700-1.140(1)(D), which states:

Insurance producers shall remit all premium payments associated with a personal insurance policy to those persons entitled to them as soon as is reasonably possible after their receipt by the licensee, but in no event later than thirty (30) days after the date of receipt, provided, however, that premiums may be remitted at a later point in time if the licensee is so authorized under a written agreement between the licensee and the person legally entitled to the premiums. In no event, however, shall a licensee retain premium payments if to do so will result in the failure to obtain or continue coverage on behalf of an insured or prospective insured.

The Director has statutory authority under § 374.190, RSMo 2000, to “examine and inquire into all violations of the insurance laws of the state...by any insurance agent.” The same statute grants subpoena power to the Director to compel the attendance of insurance agents to appear for examination under oath.

Violation of Insurance Statutes/Regulations

The Director seeks a determination that by failing to respond to either of the Division's inquiry letters, Al-basir violated 20 CSR 100-4.100(2)(A), which requires a response within twenty days. According to the affidavit and records produced by Fitzpatrick, Al-basir never responded to his inquiries. By failing to respond to Fitzpatrick's inquiries made by letters dated March 20, 2013 and May 22, 2013, Al-basir violated the regulation and is therefore subject to refusal under § 375.141.1(2).

Section 374.190 vests in the Director the responsibility to “examine and inquire into all violations of the insurance laws of the state...by any insurance agent,” and grants subpoena power to the Director to compel the attendance of insurance agents to appear for examination under oath. Al-basir failed to respond to the Director’s subpoena. By failing to respond to the Director’s subpoena to appear at the conference on November 14, 2013, Al-basir did not comply with his duty under § 374.190.

Finally, 20 CSR 700-1.140(1)(D) imposes time standards upon the remittance of premium payments collected by agents on behalf of insurance companies. The Director has demonstrated that Reliable is owed \$449.56 in unremitted premiums collected by Al-basir over two years ago, that there was never any written agreement to extend the thirty-day time limit for doing so, and that Reliable had no business policy or practice that allowed any extension. Therefore, we conclude that Al-basir is subject to refusal under § 375.141.1 (2) for violating 20 CSR 700-1.140(1)(D).

Improperly Withholding, Misappropriating or
Converting Moneys – Subdivision (4)

The Director argues that he properly refused Al-basir’s renewal application under § 375.141.1(4) because Al-basir acted in a fiduciary capacity with Reliable and failed to deliver premiums held in trust for the company, thereby withholding, misappropriating or converting them to his personal use.

To withhold is “to refrain from granting, giving or allowing.” MERRIAM-WEBSTER’S COLLEGIATE DICTIONARY 1439 (11th ed. 2004). Misappropriation is “[t]he unauthorized, improper, or unlawful use of funds or other property for [a] purpose other than that for which intended.” *Monia v. Melahn*, 876 S.W. 2d 709, 713 (Mo. App. E.D. 1994). Conversion is the diversion of another’s funds, by the holder of such funds, to a purpose other than that specified

by the owner. *Hall v. W.L. Brady Investments, Inc.*, 684 S.W. 2d 379, 384 (Mo. App. W.D. 1984). The Director provided evidence to show that premiums were collected and not remitted to Reliable. While Al-basir's complaint states that he is hard working and appears to allege that he was robbed of these premiums in February, these statements from the complaint cannot be used to establish any fact or to raise a genuine issue of fact under 1 CSR 15-3.446(6)(B). Furthermore, the admissions that Al-basir did not work for Reliable in the month of February support the conclusion that Al-basir engaged in conduct meeting the definitions of withholding, misappropriating or converting funds collected for premiums he was obligated to pay over to Reliable.

We find Al-basir's conduct gives the Director cause not to renew his license under § 375.141.1(4).

Dishonest Practices—Subdivision (8)

The Director argues that because Al-basir failed to remit premiums he collected for Reliable, Al-basir engaged in dishonest practices or demonstrated untrustworthiness or financial irresponsibility in the conduct of business, providing a cause for a refusal to renew under § 375.141.1(8). We agree.

Dishonesty is a lack of integrity or a disposition to defraud or deceive. MERRIAM-WEBSTER'S COLLEGIATE DICTIONARY 359 (11th ed. 2004). Reliable conducted an audit and discovered that Al-basir collected premiums on its behalf for eight different personal insurance policies and never forwarded those premiums to the company. Al-basir's conduct was inherently dishonest.

"Untrustworthy" is defined as "not trustworthy" and "trustworthy" is defined as "worthy of confidence." WEBSTER'S THIRD NEWS INT'L DICTIONARY 2457, 2514 (unabr. 1986). Clearly

Al-basir's conduct in collecting and keeping the premiums was not worthy of the confidence placed in him by Reliable.

Financial irresponsibility simply means a lack of accountability. Collecting and failing to remit premiums is irresponsible in the business of an insurance producer.

There is cause under § 375.141.1(8) for the Director to refuse to renew Al-basir's license.

Our Discretion

In many applicant cases, the appeal vests in this Commission the same degree of discretion as the licensing agency, and we need not exercise it in the same way. *State Bd. of Regis'n for the Healing Arts v. Trueblood*, 324 S.W.3d 259, 264-67 (Mo. App. W.D., 2012).

But § 374.051.1 states:

Any applicant refused a license or the renewal of a license by order of the director under sections 374.755, 374.787, and 375.141 may file a petition with the administrative hearing commission alleging that the director has refused the license. The administrative hearing commission shall conduct hearings and make findings of fact and conclusions of law in determining whether the applicant may be disqualified by statute. **Notwithstanding section 621.120, the director shall retain discretion in refusing a license or renewal and such discretion shall not transfer to the administrative hearing commission.**

(Emphasis added). Under this provision, we have no discretion when there is any cause to refuse the issuance of a license. Al-basir's complaint states he is hard working and appears to allege that he was actually robbed of the proceeds of the missing renewal payments. But those statements are not evidence, and when Al-basir was given a chance to respond to the Director's motion for summary decision, he offered nothing. Our summary decision regulation provides that he "shall not rely solely on [his] own pleading to establish any fact, or to raise a genuine issue as to any fact." 1 CSR 15-3.446(6)(B). We are prohibited from taking the statements in Al-basir's complaint as true and from remaking the Director's decision not to renew his license.

We have independently determined that the Director has cause to deny Al-basir's renewal application under § 375.141.1(2), (4), and (8). As we have no discretion in this matter, this finding is sufficient.

Summary

The Director has cause to refuse to renew Al-basir's license under § 375.141.1(2), (4), and (8). We therefore grant the Director's motion for summary decision and cancel the hearing.

SO ORDERED on April 27, 2015.

\s\ Audrey Hanson-McIntosh
AUDREY HANSON MCINTOSH
Commissioner